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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Fees for Ancillary or Supplementary)
Use of Digital Television Spectrum)
Pursuant to Section 336(e)(1))
of the Telecommunications Act of 1996)

MM Docket No. 97-247

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AUG 3 - 1998

TO: The Commission

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

REPLY COMMENTS OF
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS
AND THE PUBLIC BROADCASTING SERVICE

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August 3, 1998

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TO: The Commission

**REPLY COMMENTS OF
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS
AND THE PUBLIC BROADCASTING SERVICE**

The Association of America's Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") submit these brief reply comments in response to the comments filed in this proceeding.

1. The Commission in its Notice of Proposed Rulemaking sought comment on the position of APTS and PBS that the rules adopted by the Commission should provide that noncommercial television licensees are exempt from fees on revenue obtained from use of their excess digital spectrum for ancillary or supplementary services. Notice ¶¶ 30-31. In the APTS/PBS comments, we explained why such an exemption for revenue applied to the mission-related activities of public television licensees is consistent with both law and sound public policy. Notably, no commenter opposed creation of such an exemption.

The comments of UCC, et al.¹ state that they "generally support" the requested exemption as a means of funding the noncommercial programming offered by public television. They argue, however, that the exemption should be available only if the ancillary and supplementary services offered by public television licensees are not advertiser-supported. UCC, et al. base this argument on the assertion that public television licensees are barred by statute from offering advertiser-supported services. UCC, et al. Comments, pp. 15-17.

This argument should not be considered in the present proceeding. The Commission has indicated that it will institute another rulemaking for the purpose of considering the permissible uses of the digital spectrum by non-commercial television licensees to offer ancillary and supplementary services. UCC, et al. may present their argument in that proceeding, and APTS and PBS will respond at that time. Here, the only issue raised is whether public television licensees, assuming they at some point do receive some form of revenue from ancillary or supplementary services, should be free to use it to support their mission-related activities. As the APTS/PBS opening comments showed, both the statute and sound public policy dictate that public television licensees should be exempt from a fee on revenues used to support their mission-related activities.

2. UCC, et al. suggest that the Commission recommend to Congress that the Communications Act be amended to allow fees collected under Section 336 to be placed in a fund to support public broadcasting and other noncommercial telecommunications services. UCC, et al. Comments, pp. 17-18. APTS and PBS endorse this suggestion. It is similar in nature to a portion of a proposal APTS, PBS, and the Corporation for Public Broadcasting ("CPB") presented to the Advisory

¹The comments of UCC, et al., dated May 4, 1998, were filed on behalf of the Office of Communication of the United Church of Christ, the Media Access Project, and several other groups.

Committee on Public Interest Obligations of Digital Television Broadcasters in June of this year.

The Advisory Committee was created to consider, among other things, how the public interest impact of digital broadcasting can be maximized. APTS, PBS, and CPB explained in their recommendations to the Advisory Committee that the public interest would be well served by ensuring the long-term financial security of public broadcasting, in particular by creating a trust fund for the educational use of digital technology by public television and radio stations. APTS, PBS, and CPB suggested various sources of revenue for the trust fund, including the fees assessed on revenues derived from ancillary and supplementary services offered by commercial broadcasters on their excess digital spectrum. Of course, that recommendation is separate from, but entirely consistent with, our argument that public television licensees must be exempted from such fees pursuant to the existing statute.

A copy of the APTS/PBS/CPB recommendations to the Advisory Committee is attached hereto for the Commission's consideration. APTS and PBS urge the Commission to take any appropriate steps available to it to further the creation of a permanent trust fund for digital educational programming and services provided by public broadcasting.

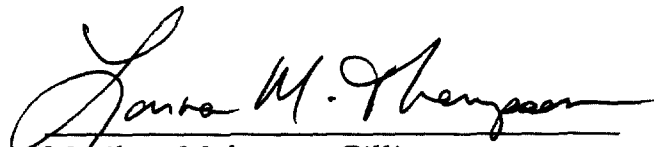
CONCLUSION

For the reasons stated above and in the APTS/PBS opening comments, the Commission should promulgate a rule stating that noncommercial television licensees are exempt from fees on revenue received from ancillary and supplementary services that is used as a source of funding for public television's mission-related activities. The Commission should also consider the recommendations discussed above.

Respectfully submitted,

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August 3, 1998

Certificate of Service

I, Tina T. Butler, hereby certify that I have on this 3rd day of August, 1998, sent via first-class mail, postage prepaid, copies of the foregoing APTS/PBS Reply Comments in the Fees for Ancillary or Supplementary Use of Digital Television Spectrum proceeding to the following:

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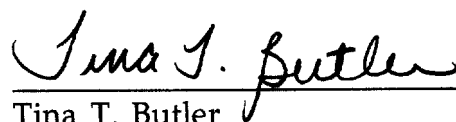
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August 3, 1998



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Dear Leslie and Norm:

In an effort to best serve the public interest in the approaching digital broadcasting future, public broadcasting has crafted the attached proposal to assist the Advisory Committee in its deliberations. The proposal advocates the creation of a permanent secure source of funding for public broadcasting. For over thirty years, public broadcasting has been at the forefront of public interest programming, and will continue to be a leader in providing public service to the American public in the new digital environment. The key challenge for public broadcasting is to assure funding for continued and expanded educational, informational, and cultural programming for everyone. Public broadcasting's proposal urges the Advisory Committee to recommend a renewed commitment to public broadcasting by creating an adequately capitalized trust fund that will assure vibrant noncommercial public interest programming and services to fill the broadcast capacity in the digital age.

As you know, other proposals have suggested giving public broadcasters a second channel for public interest programming. The attached paper also discusses the guarantees that must be in place for these proposals to serve the public interest. I am disseminating this paper to the committee members prior to Monday's meeting so we can have a full discussion of public broadcasting's proposal with the entire committee. I look forward to a stimulating and insightful exchange about all of the ideas before the Advisory Committee, so we can craft a blueprint that will benefit the public in the days to come.

Sincerely,

Frank H. Cruz

encl.

**RECOMMENDATIONS
TO
THE ADVISORY COMMITTEE
ON
PUBLIC INTEREST OBLIGATIONS OF
DIGITAL TELEVISION BROADCASTERS**

STRENGTHENING PUBLIC TELEVISION FOR THE DIGITAL AGE

*Presented by
the Corporation for Public Broadcasting, Public Broadcasting Service, and
America's Public Television Stations*

June 8, 1998

**RECOMMENDATIONS
TO
THE ADVISORY COMMITTEE
ON
PUBLIC INTEREST OBLIGATIONS OF
DIGITAL TELEVISION BROADCASTERS**

STRENGTHENING PUBLIC TELEVISION FOR THE DIGITAL AGE

*Presented by
the Corporation for Public Broadcasting, Public Broadcasting Service, and
America's Public Television Stations*

Three decades ago, the federal government made a signal commitment to a new institution. With the Public Broadcasting Act of 1967, federal policymakers achieved a rare success: they transformed an idea -- a potent combination of vision and creativity -- into a tangible, enduring legislative achievement. By creating an alternative to the purely commercial use of broadcast spectrum, the White House and Congress guaranteed that a portion of the airwaves would be devoted to the public interest.

In the ensuing years, public broadcasters have supported the creation of an abundance of provocative educational and cultural programming and have created an enduring presence in homes, schools, and universities nationwide. Thirty years of service have confirmed the wisdom of the Carnegie Commission and the public servants who were the architects of public broadcasting. Consider these accomplishments:

- Public broadcasters invented educational programming for children;
- They extended the documentary form into a powerful and appealing learning tool;
- They brought the arts to a national audience, regardless of social or economic status; and
- They made history with unflinching coverage of public affairs.

In its role as a laboratory for innovative programming ideas, public broadcasting has also been a wellspring of progress for the commercial media: cable wildlife and science channels, for instance, can trace their lineage to PBS's long-standing series *Nature* and *NOVA*, and C-Span owes its inspiration to PBS's gavel-to-gavel coverage of the Watergate Hearings in the early 1970s.

Public broadcasting continues to lead and innovate as we enter the digital age. PBS has created one of the most popular and highly regarded sites on the World Wide Web, and public broadcasters have developed extensive plans to fill the expanded capacity offered by digital technology with a new generation of educational programs and services.

As the Advisory Committee ponders the role of broadcasting in the digital age, it has the opportunity to reinvigorate this highly successful public-private partnership with the same social imagination displayed by U.S. policymakers a generation ago.

How can the Advisory Committee best accomplish its goal of maximizing the public interest impact of digital broadcasting? *In part, by ensuring a healthier, more expansive public broadcasting system.* In its proceedings to date, the Advisory Committee has considered a number of intriguing proposals for using digital spectrum in the public interest. We recommend that the Advisory Committee draft a blueprint to propel public broadcasting into the next millennium, and that, in the tradition of the Carnegie Commission, it help summon the resources to bring the best technology and content to the nation's homes, schools, libraries and businesses in the future.

Why Public Broadcasting?

As digital technology has penetrated American society, public policy has largely been focused on access to hardware. Important as hardware is, the Advisory Committee should remember that any hope for humane and civilizing use of that hardware will depend upon high quality content. Public broadcasting, the chief instrument in our country for marrying technology to superb content, is well-poised to use digital technology to increase its contribution to the nation and ensure that digital technology serves the public interest.

There are several reasons why this is so:

First, public service is the central mission of noncommercial public broadcasting, not an ancillary obligation.

Public television began as educational television. Today, even though its role has been broadened to serve viewers at home with a wide range of informational and cultural services, the enterprise retains strong links to its instructional past. Many public broadcasting stations are licensed to universities, school districts, or state educational networks, and maintain close cooperative links with educational institutions -- a role not likely to be assumed by

commercial telecasters. Teachers cite public television as their number one source of video teaching materials. PBS beams distance-learning telecourses to two-thirds of the nation's colleges and universities; 400,000 adult degree candidates enroll each year in such courses, and tens of thousands of citizens have earned their high school equivalency diplomas through courses offered on public television.

Beyond its instructional efforts, public television has demonstrated its commitment to public service in myriad other ways. Local stations televise legislative sessions, city council meetings, and school board deliberations. Public broadcasters in recent years have readily provided free time for statements by presidential candidates. In 1996, PBS and its member stations launched national and local election-year debates by congressional leaders and candidates in the hope that these new debates will take their place alongside Presidential candidate debates as regular national events.

Because of such long and highly visible service, public broadcasting has become an esteemed national institution. A recent Roper poll, for example, revealed that Americans rate public radio and public television as second and third in terms of value they receive for their tax dollars. By strengthening public broadcasting, the Advisory Committee can achieve bold, tangible progress in service to the public interest -- without the difficulties of attempting to coerce commercial broadcasters into assuming obligations they may vigorously resist.

Second, public broadcasters are already well advanced in their plans to deploy digital spectrum in the public interest.

An exhaustive planning process involving all of the major public broadcasting organizations has already produced a strategy that envisions separate digital programming streams for a variety of educational and public service purposes. During the day, local stations intend to "multicast" specific channels -- devoted, for example, to children's programs, K-12 instruction, adult education, or local news and public affairs. Public broadcasters are preparing to accompany their programs with related data that will enhance their educational impact, as well as increase viewer enjoyment. In prime time, PBS intends to bring a portfolio of documentaries and cultural programs to a universal audience in brilliant high definition pictures with CD-quality sound. In short, digital technology provides a delivery mechanism that allows public broadcasters to enlarge, deepen, and intensify their mission.

Third, public broadcasters have abundant content to deliver through digital systems -- and the capacity to create more.

Like a library with limited shelf space, public broadcasting already has a wealth of good material sitting in storage. Digital television, with its promise of expanded "electronic shelf space," will allow public broadcasters to break free of today's technological limits on the amount and variety of educational programming they can provide to the nation. DTV means that technology can now catch up with our mission. It means more instructional programming, more wholesome children's programming, more documentaries, more of the arts, more and better public service.

Although the digital age is still new, PBS is already a leader in distributing valuable program-related and stand-alone data -- PBS ONLINE, teacher training programs like PBS MATHLINE, curriculum materials, and literacy instruction using new media as distribution channels. What is most needed now are the resources with which to program the new digital spectrum.

Fourth, the federal government has made a major investment in public broadcasting -- an investment that it should protect and extend.

Since 1967, federal funding has helped build public broadcasting into a major national resource with a highly sophisticated satellite-based distribution system. Expanding and extending the mission of public broadcasting will protect the current assets and ensure a continuing return on this major national investment. It will also preserve the most natural and accessible "entry ramp" for public-service uses of the Information Superhighway.

Fifth, public broadcasters have a tradition of leadership in technology development.

Not only is public broadcasting's national infrastructure well established; its managers, technicians, and engineers also possess a wealth of experience in using broadcasting, satellite networks, DBS, cable, datacasting, closed captioning, interactive video discs, and the Internet to reach homes, classrooms, and businesses.

In an earlier era, public broadcasters developed such innovations as satellite broadcasting, closed captioning for the hearing-impaired, and the supplementary audio channels for the blind. PBS administered the Advanced Television Testing Center during the development of digital TV, and its member stations played an active role in developing the digital transmission standard

and testing the various forms of digital technology. Public broadcasters were the first in North America to develop all-digital networks and technical facilities, and PBS was the first to distribute a continuous high-definition television feed. PBS ONLINE is a widely acclaimed leader in providing innovative educational content on the World Wide Web and PBS National Datacast is an industry leader in delivering data via broadcast airwaves.

In short, public broadcasting provides not only the best, but perhaps the only existing vehicle for the federal government to use in advancing nationally the educational uses of digital technology.

A Trust Fund for the Digital Future

Although the coming digital future offers many opportunities for lively debate, it should be easy to agree on one point: a strong, well-financed and independent public broadcasting sector will be needed if the new digital broadcast spectrum is to serve the public well. As channels and choices multiply, most will be commercially supported, and any public services the commercial channels offer will necessarily be subordinate to their overriding and central need to return revenues to shareholders. This makes it essential to sustain the public role of CPB, and to support a strong and vibrant public radio and television service whose sole mission is nonprofit public service.

As the Advisory Committee considers different approaches for strengthening public broadcasting, we offer one primary proposal, intended to supplement and complement ideas already under consideration. *It is that Congress establish and adequately capitalize a permanent trust fund for digital educational programming and services provided by public broadcasting.*

Since the best way to guarantee and advance the public interest uses of digital spectrum is to ensure the long-term financial security of public broadcasting, we propose a trust fund for the educational use of digital technology by public television and radio stations. The fund would support educational programming for multicast channels, high definition cultural programming, data services, new children's initiatives, new services to previously underserved audiences, and local public-service programming. Sources of revenue for the trust fund might include the following:

- Proceeds from the auction of returned public television analog spectrum (redirected from deficit reduction);
- Proceeds from the future auction of *any* spectrum;

- Compensation from commercial broadcasters who choose to pay public broadcasters to fulfill part of their public interest obligations (not all obligations should be subject to the option, however);
- Fees assessed upon revenues derived from commercial broadcasters' ancillary and supplementary digital services;
- A transfer fee placed on the sale of commercial licenses;
- Proceeds from the sale or lease of noncommercial vacant allotments that are currently reserved or will be reinstated at the end of the digital transition; and
- Private contributions motivated by new tax incentives, such as a charitable contribution credit, rather than a deduction.

The national goal should be to establish a fund of *at least* \$5 billion -- principal sufficient to provide seed money for public broadcasters' new digital programs and services. Once an adequate level of principal is achieved, annual federal appropriations for public broadcasting could perhaps be discontinued. After the fund is fully capitalized, ongoing revenues could be contributed to the trust fund or set aside for special public broadcasting projects, such as new children's services, local production, or programming for underserved audiences.

This trust fund proposal is separate and distinct from public broadcasters' pending request that the federal government assist in the one-time cost of equipment needed for the transition to digital broadcasting.

Retention of Public Broadcasters' Analog Spectrum

Beyond securing funding for public television, Media Access Project and A.H. Belo Corporation have proposed allowing noncommercial stations to retain their analog spectrum allotment for use as a public interest channel. Though this idea is inherently appealing because spectrum is a valuable asset, we recommend approaching it with caution.

In a digital world where broadcasting options will quadruple, the key public interest challenge is securing the funding needed to fill this broadcasting bandwidth with programs of quality and substance that will reach a wide national and local audience. Public broadcasters can only encourage this proposal if there is some guarantee of content protection consistent with First Amendment principles, and with the assurance of an adequate, secure and

permanent source of funding to program and operate a second channel. Any funding mechanism would require multiple sources. For instance, the value of fees imposed on commercial broadcasters' ancillary and supplementary services is speculative and would likely be insufficient to underwrite the costs of equipping and operating a second channel.

Another idea under discussion is the creation of new digital services by new players -- libraries and universities, for example. While access to the airwaves is a laudable goal, access alone is not enough. To create programming that people will choose to watch in today's highly competitive media environment requires broadcasting experience, editorial skill, technical expertise and promotional knowhow, along with considerable financial resources. Public broadcasting, with its wealth of operational expertise and sophisticated infrastructure, is best positioned to partner with libraries, universities, and other nonprofit groups to deliver new and expanded digital programs and services.

If the Advisory Committee decides to recommend the retention of public broadcasters' analog spectrum allotment for use in the public interest, the best conceivable way to success is to use the existing on-ramp to the Information Superhighway. As we noted earlier, public broadcasters are already working to deploy digital technology for education. They are focusing their efforts on expanding services in four areas: early childhood services; technology integration into K-12 education; work force education/training; and digital service accessibility. Examples of the types of public services that public broadcasting could provide with a second channel include the following:

- working with local schools, colleges, universities, and other educational institutions to engage in an even broader range of educational services;
- partnering with libraries, museums, and other cultural institutions to expand distribution of digital information to local communities;
- providing greater access to telecommunications services for the unserved and underserved populations who, because of economic, geographic, physical, cultural or language barriers, have been left behind by the commercial marketplace;
- providing more free air time for national and local political candidates and parties;
- working with state and local governments to provide greater access to local civic affairs; and

- providing opportunities for independent program producers to expand their offerings.

For these reasons, we strongly suggest that strengthening and renewing the nation's existing infrastructure for public service broadcasting would be a far more hopeful strategy than attempting to create something resembling "digital public access." Encouraging existing broadcasters to strengthen their ties and deepen their relationships with other public service institutions -- libraries, universities, museums, and schools, for example -- will yield more than trying to reinvent this wheel.

Guaranteeing Public Service

A federal commitment to a prominent role for public broadcasting in the digital age, demonstrated by secure funding, would provide the only reliable guarantee that the public's digital spectrum will truly serve the public interest. Strengthening public broadcasting will maximize the educational impact of digital television far more readily than imposing additional operational mandates on reluctant commercial broadcasters whose primary obligation is to shareholders and not the public at large.

Most important, assuring a vibrant, independent, well-financed public broadcasting system in the digital age will encourage the world's greatest creative minds -- educators, filmmakers, writers, artists, and journalists -- to join in fashioning exciting new content and a new generation of telecommunications services for the American people.

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